

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

RICK L. SOLOMON #214643,

Petitioner,

File No. 2:08-CV-140

v.

HON. ROBERT HOLMES BELL

GERALD HOFBAUER,

Respondent.

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**ORDER ADOPTING REPORT AND RECOMMENDATION  
AND DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on a Petitioner Rick L. Solomon's objections to the Magistrate Judge's August 5, 2008, Report and Recommendation ("R&R") recommending that Petitioner's 28 U.S.C. § 2254 petition for writ of habeas corpus be dismissed with prejudice pursuant to Rule 4 of the Rules Governing § 2254 Cases, because it plainly appears from the petition and the attached exhibits that Petitioner's § 2254 petition is barred by the applicable statute of limitations. (Dkt. No. 7.) Petitioner filed objections to the R&R on August 19, 2008. (Dkt. No. 10.)

This Court is required to make a *de novo* determination of those portions of the R&R to which objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Petitioner contends that, contrary to the representations in the R&R, his petition was filed pursuant to 28 U.S.C. § 2242 rather than 28 U.S.C. § 2254. Petitioner also contends that, contrary to the representations in the R&R, the matter that he has pending in the state court is not a motion for relief from judgment.

Contrary to Petitioner's contentions, § 2242 does not provide him with a right to relief separate and distinct from his rights under § 2254. Petitioner is in custody pursuant to a state court judgment and seeks a writ of habeas corpus on the basis that his incarceration is unlawful. Regardless of whether Petitioner denominates his petition as one arising under § 2242 or § 2254, Congress has provided that "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2244(d)(1). The Magistrate Judge correctly determined that Petitioner's application for writ of habeas corpus is subject to dismissal because it was not filed within the applicable limitations period. Accordingly,

**IT IS HEREBY ORDERED** that Petitioner's objections to the Report and Recommendation of the Magistrate Judge (Dkt. No. 10) are **DENIED**.

**IT IS FURTHER ORDERED** that the August 5, 2008, Report and Recommendation of the Magistrate Judge (Dkt. No. 7) is **APPROVED** and **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. *Slack v. McDaniel*, 529 U.S. 473 (2000).

Dated: November 24, 2008

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE